IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1868 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE BRANCH MANAGER - Petitioner(s)

Versus

HASANBHAI NAZBUDDIN VANKAR - Respondent(s)

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Appearance :

MR PS CHARI for Petitioner(s) : 1,
MR PK SHUKLA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/09/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the award dated 26th May, 2004 passed by the Industrial Tribunal No.2, Central, Rajkot in Reference (ITC) No.14/98.

2. The respondent was employed as a Peon with the petitioner-Bank. On 29.7.87, a charge-sheet came to be issued against the respondent making several allegations of financial irregularities and misappropriation of bank's fund. As many as 11 charges were levelled against the respondent. Upon conclusion of the departmental inquiry, after giving full opportunity to the respondent to meet with the charges, the Inquiry Officer submitted his report. He concluded that charges No.2, 4, 5, 8, 9 and 10 were proved. He, however, held that remaining charges, viz. charges No.1, 3, 6, 7 & 11 were not proved. The Disciplinary Authority, however, tentatively came to the conclusion that all the charges except charges No.1 and 11 are proved. To that extent, he disagreed with the findings of the Inquiry Officer. This was conveyed to the respondent in the show cause notice dated 8.9.88. He proposed punishment of terminating the service from the Bank's service. Respondent replied to the show cause notice and made a representation on 21.11.88. The Disciplinary Authority eventually passed the penal order on 13th January 1989 terminating the services of the respondent without any notice. The Disciplinary Authority concluded that all charges except charges No.1

and 11 are proved. After this order was passed in January 1989, respondent took no further steps to challenge the same. Nine years after passing of the order, he raised an industrial dispute. The dispute was referred for adjudication before the Industrial Tribunal. Before the Industrial Tribunal, significantly the responded passed a purshis on 26th April 2004, contents of which translated into English read as follows:-

> "I the undersigned respectfully submit that the opponent has conducted a departmental inquiry against the applicant and proceedings thereof have also been produced. I am not challenging the legality of the departmental inquiry and seek to confine my submissions only with respect to the penalty imposed upon me being harsh for which purpose this purshis is given."

3. The Industrial Tribunal by its impugned award dated 26.5.04 allowed the reference partially. The respondent was directed to be reinstated in service after quashing the termination order dated 13.1.89 and the intervening period was directed to be treated as continuous for service purposes. Penalty of withholding of three increments with future effect was provided for. Regarding backwages, it was stated that from 13.1.89 to

31.12.94, there will be no direction for payment of backwages. After 1.1.95, the workman should be paid 50 per cent of the wages otherwise due and payable to him.

4. In order to appreciate how vulnerable the entire order is, it would be necessary to note briefly the charges levelled again the respondent.

4.1 Since charges No.1 and 11 were held not proved, the same may be ignored for consideration. Charge article 2 was to the effect that on 3rd May 1984, the respondent was given a bundle of notes for tying thread around it. He had taken away 14 notes of Rs.100/- each.

Charge article 3 pertained to an incident of 25th March 1986 when certain bundles of cash were entrusted to the respondent for tying thread around it, the respondent slipped out of the bank premises at about 5.15 in the evening though he was stopped by an officer. Upon rechecking the cash, it was found that 10 notes of denomination of Rs.100/- were found short. It was thus alleged that the respondent took away Rs.1000/- from the bundle of cash entrusted to him.

Charge article 4 is with respect to yet another incident wherein the amount entrusted to the respondent was found short by Rs.700/-. He had thus misappropriated the said amount.

Charge article 5 pertained to misconduct in introducing two individuals namely Sadiq Badaruddin and Sabir Badaruddin for opening bank accounts in the petitioner-Bank by giving false details about their residential address knowing fully well that those persons had given false addresses.

Charge article 6 pertained to helping said two persons in taking loans from the bank for which the respondent had received gratification of Rs.1500/-

Charge article 7 states that the respondent had been a party in defrauding the bank in release of the loans in favour of Sadiq Badaruddin and Sabir Badaruddin.

Charge article 9 details the close co-relation of operating the bank accounts by Shri Sadiq Badarrudin and the operating of the account by the respondent himself.

Charge article 10 alleged that the respondent received an illegal gratification of Rs.4000/-.

5. From the above detailing of the charges, it can be seen straightway that all the charges were of extremely serious nature involving question of moral turpitude and misappropriation of funds belonging to the Bank and accepting illegal gratification for helping private individuals in opening bank accounts and manipulating the bank accounts. Not one of these charges can be termed as procedural irregularity or mere negligence on the part of the respondent. In so far as the charges are concerned the same were clear in its contents and the Bank had conveyed to the respondent that these charges of extremely serious nature in which Bank alleged that the respondent had committed several misconducts of misappropriation of money are being inquired into. Therefore, in so far as the charge-sheet is concerned, the Bank had left no manner of doubt with respect to the nature of charges.

6. As noted earlier, a full-fledged departmental inquiry was conducted, witnesses were examined, Inquiry Officer's report was drawn and a copy thereof was

supplied to the respondent. When the disciplinary authority intended to partially disagree with the Inquiry Officer's report, respondent was put to notice thereof. His representation was taken into account. It was ultimately concluded that 9 out of 11 charges levelled against him were proved. Disciplinary Authority eventually imposed the punishment upon him.

7. The respondent after nearly 9 years raised an industrial dispute challenging the punishment of removing him from service. Before the Tribunal he passed a purshis stating that he does not dispute the legality of the departmental inquiry and confines his arguments to the question of harshness of the penalty imposed. It was, therefore, within that limited scope that his case was required to be considered by the Industrial Tribunal. A cursory glance at the charges levelled and held to have been proved against the respondent would show that the charges were extremely serous. Even if one of the charges was proved, it was by itself sufficient to permit the employer to terminate the services of the respondent. When as many as 9 such charges were proved, was it possible for the learned Judge to conclude that the punishment was harsh and excessive? In fact, there are

some disturbing conclusions, which the learned Judge has reached and I would be failing in my duty if I did not record the same in this order.

8. Despite the nature of charges as noted earlier and despite the clear admission of the respondent that he does not challenge the legality of the inquiry and confines his submissions to the harshness of the punishment imposed, learned Judge examined the findings of the disciplinary authority and came to some curious conclusions. The Industrial Tribunal in para 6 of the award noted the contents of the purshis filed by the respondent. It was noted that the workman has not challenged the legality of the departmental inquiry and has declared that he makes submissions only with respect to the harshness of the penalty imposed.

8.1 Despite this clear position, the Industrial Tribunal observed that considering the material on record, the charges were not fully proved against the respondent, that the conclusions were based only on surmises and conjectures, that if any amount was found short, explanation should have been called from the officers who were handling the table, instead the Bank

caught hold of a lowly paid servant and the entire blame was put on his head by prejudiced mind and bias which is improper and illegal on the part of an institution which is discharging public duties. In fact, it was observed that the situation is like a thief catching the guard. The learned Judge observed that the Bank should have traced the history and geography of the officers who were envious and instead of doing that, the respondent was charged with helping individuals in opening the bank accounts. Before levelling such allegations, the Tribunal wondered, why did the Bank not initiate criminal action against those who were responsible for knocking out money from the bank. Before passing the loans, was it not the responsibility of the officers to verify the details, is the question which the learned Judge posed in the order. It was also wondered why steps were not taken for sending the responsible officers of the Bank behind the bars. Were such officers primarily not responsible was one more question which occurred to the learned Judge.

8.2 In para 12 of the decision, the learned Judge concluded that even if the legality of the inquiry is believed, proved charges are of minor negligence and such

charges can never be visited with punishment of dismissal which amounts to economic death to the workman. It was observed that under section 11-A of the Industrial Disputes Act, the Tribunal has power to interfere with the punishment order which has been passed under such suspicious circumstances. In para 14 of the judgment, it was observed that without sufficient evidence, when the charges were held proved only on the basis of surmises and conjectures and when dismissal order has been passed for minor negligence, the Court has the power to interfere with in exercise of powers under section 11-A of the Industrial Disputes Act and reduce the punishment. In para 15, it was observed that considering the past record of the workman, his long service, the fact that he was the sole earning member of the family and that there is no other means of livelihood and there was no possibility of finding employment elsewhere and considering that the offences were of insignificant character and of irregularities and also considering that the evidence are perverse, illegal and unjustified, dismissal order was required to be set aside. It was further observed in para 16 of the award that the respondent discharged his duties within the framework of the rules and regulations of the Bank. He had always

acted according to the instructions of his superior officers and had always acted in the best interest of the Bank. He had never crossed the boundaries. Thus the allegations are imaginary in nature and are not borne out from facts. The question of delay was ignored by noting that once the reference has been made for adjudication in respect of minor misconduct and minor negligence, delay cannot be a factor to sustain the order which amounts to economic death and it is just like using a bull-dozer for crushing a fly. Upon these conclusions, the Industrial Tribunal set aside the penalty order, directed reinstatement of the workman, provided for a punishment of withholding of three increments with future effect and also granted 50 per cent backwages from 1.1.95.

9. The award of the Industrial Tribunal cannot be sustained on any count. To begin with, the charges against the respondent were of extremely serious nature. Each individual charge involved doubtful integrity and moral turpitude. Charges specifically alleged that the respondent had misappropriated funds of the Bank and/or accounts holders. It was alleged that the respondent defrauded the bank and helped individuals to open bank

accounts by supplying false details. Such persons had manipulated bank accounts and utilized the facilities of the bank for their personal gain. All throughout the respondent had gained from such clandestine transactions. The employer through a validly held inquiry, concluded that the charges were proved. The respondent though challenged the punishment, later on before the Industrial Tribunal, conceded that the inquiry was validly conducted. In fact, he confined his arguments only to the question of punishment being harsh and excessive.

10. In that view of the matter, it was not open for the Industrial Tribunal to go into larger questions whether the charges were validly proved or not or whether the Bank should have inquired into the conduct of higher officers who also might have had some role to play in some charges or other. Under no circumstances, the respondent could have been given any reprieve by stating that there were other officers who might have been involved. As a matter of fact, that was not even the case of the respondent and there was no material before the Industrial Tribunal to make such sweeping observations.

11. There is yet another aspect of the matter. As noted earlier, in para 15 of the award of the learned Judge states that considering the past record of the workman and other circumstances, the punishment is harsh. From the R & P called for from the Tribunal, I do not find that the past record of the workman was produced before the Industrial Tribunal. In absence of any material, it is difficult to understand as to how such an observation has been made. Learned advocate Shri Shukla appearing for the respondent also agreed that the past record of the respondent was not produced before the Industrial Tribunal.

11.1 The observations of the Tribunal such as the findings are perverse, illegal, unjustified or that the allegations are by way of afterthought are not borne out from the record. The learned Judge has also not discussed any material to come to such strong and definite conclusions.

11.2 Inquiry proceedings were produced before the Industrial Tribunal. From the perusal of the record it appears that the Bank had examined as many as 8 witnesses and produced not less than 79 documents in the

departmental inquiry. Learned Judge has not discussed any evidence, has not referred to deposition of any of the witnesses or referred to any documentary evidence. Yet, he concludes that the charges are not fully proved, that the conclusions are based on surmises and conjectures, that the proved charges are of minor negligence. It is difficult to understand how the learned Judge came to such conclusions without discussing the evidence produced during the course of the inquiry and without analysing the conclusions of the Inquiry Officer and the Disciplinary Authority. There was also no basis, no material, no evidence for the learned Judge to conclude that the respondent discharged his duties within the framework of rules and regulations of the Bank, had always acted according to the instructions of his superiors, and had always acted in the best interest of the Bank, had never crossed the boundaries and thus the allegations are imaginary and not born out from facts. I am at a total loss to understand from where does the learned Judge get the material to give such a certificate to the respondent in such glowing terms.

11.3 There is yet another aspect of the matter which disturbs me no end. As noted earlier, each of the 9

charges held to have been proved against the respondent has an element of doubtful integrity. The learned Judge came to the conclusion that the charges were of minor negligence. It is extremely unfortunate and shocking to observe that such serious charges are categorised as charges of minor negligence. With all restraints at my command, I cannot help observing that the observations of the learned Judge were most unfortunate and not borne out from the record. Considering the seriousness of the allegations made, it was by no stretch of imagination possible for the learned Judge to say that the allegations were of minor negligence.

12. It is by now well settled through series of decisions of the Hon'ble Supreme Court that the Courts and Tribunals have no power to interfere with the quantum of punishment imposed by the employer unless the punishment imposed is found to be so disproportionate to the proved charges as to shock the conscience of the Court. In a decision in the case of B.C.Chaturvedi v. Union of India, AIR 1996 SC 484, the Hon'ble Supreme Court observed in para 25 that the High Court can interfere with the punishment only when the punishment or penalty is shockingly disproportionate.

12.1 In the case of Regional Manager, UPSRTC v. Hoti Lal, AIR 2003 SC 1462, the Hon'ble Supreme Court emphasised in para 10 of the judgment that the Court or the Tribunal while dealing with the quantum of punishment has to record reasons as to why it has felt that the punishment is not commensurate with the proved charges. It was observed that the scope for interference is very limited and restricted to exceptional cases. It was further observed that if the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable.

12.2 In the case of C.M.D.United Commercial Bank v. P.C.Kakkar, AIR 2003 SC 1571, the Hon'ble Supreme Court has observed as under:

“11. The common thread running through in all these

decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra), that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

12.3 In the decision of Union of India v. P. Chandra Mouli, (2003) 10 SCC 196, while setting aside the order of the High Court in interfering in the order of compulsory retirement, it was observed by the Hon'ble

Supreme Court that it is well settled that once the charge against the delinquent is established, the quantum of punishment is for the employer to decide and the Court ordinarily would not interfere with the order on the quantum of punishment once the court comes to a conclusion that there has been no infirmity with the procedure. In the case of D.P.S. Rural Regional Bank v. Munna Lal Jain, 2005 AIR SCW 95, the Hon'ble Supreme Court once again reiterated that when the court feels that the punishment is shockingly disproportionate, it must give reasons for coming to such a conclusion and mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the decision of Bharat Forge Co. Ltd v. Uttam Manohar Nakate, 2005 AIR SCW 554, after taking note of number of previous decisions on the point, the Hon'ble Supreme Court in para 30 observed that it is trite the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no

other. In para 31, it was further observed that if the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground. In para 32 of the decision, the observations made in the case of Regional Manager, Rajasthan State Road Transport Corporation v. Sohan Lal (2004) 8 SCC 218 were recorded and it was held that it is not the normal jurisdiction of the superior Courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved.

12.4 In the case of Mahindra and Mahindra Ltd. v. N.B. Naravade, 2005 AIR SCW 1115 in para 20, the Hon'ble Supreme observed as follows:

> “20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein-above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can

be exercised under Section 11-A is available only on the existence of certain factors like punishment beign disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us, i.e.Orissa Cement Ltd. (supra) and New Shorrock Mills (supra), this Curt held : “punishment of dismissal for using of abusive language cannot be held to be disproportionate”. In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated byany civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein-above.”

12.5 In the decision of Bharat Coking Coal Ltd v. Bihar Colliery Kamgar Union, 2005 AIR SCW 1149 the question of adequacy of punishment and the powers of the

Court to interfere with the imposition of punishment by the employer came up consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court set aside the order of the Industrial Tribunal which had interfered with the punishment imposed by the employer.

12.6 In the case of M.P.E.B. v. Jagdish Chandra Sharma, 2005 AIR SCW 1352, the Hon'ble Supreme Court set aside the orders passed by the Labour Court and the High Court directing reinstatement of the workman without backwages setting aside the punishment awarded by the employer upon the charges of the workman hitting his superior officer and subsequent unauthorised absence.

13. From the above decisions, it can be seen that in the present case, the Industrial Tribunal committed a grave error in interfering with the punishment imposed by the employer. Upon conclusion of the departmental inquiry when it is found that the respondent had committed serious misconduct of misappropriation of funds and several other misconducts involving doubtful integrity, it was most inappropriate on the part of the Industrial Tribunal to characterize such misconducts as minor lapses of negligence and to provide for

reinstatement and substantial portion of backwages in a reference which was raised nearly nine years after the event and especially when the workman did not question either the legality of the departmental inquiry or the conclusions of the employer pursuant to such an inquiry.

14. In the result, the petition is allowed. The impugned award of the Industrial Tribunal is set aside. Rule is made absolute accordingly. Considering that the workman is out of job since long, I refrain from passing any order as to costs.

(Akil Kureshi, J.)

(vjn)